

1 A I didn't say that. I just said that in this
2 particular case with the adjacent channel operation that
3 such a signal of that level was not usable.

4 Q Okay. All right. Now, in your opinion, if there
5 had not been strong adjacent channel signal, would you have
6 expected the signal from Monticello to be too low to be
7 used?

8 A Here, of course, we have to bring in the long term
9 factor that's involved.

10 Q Well, I am just talking about 28 --

11 A Twenty-eight microvolts.

12 Q Twenty-eight microvolts.

13 A At that particular point in time, it might have
14 been sufficient.

15 Q Well, now how much do you think the minimum
16 voltage across that receiver would have been to make the
17 receiver operate?

18 A Strictly without any interference?

19 Q Without any interference.

20 A It could probably tolerate some lesser signal than
21 that.

22 Q That is clear. But do you have an opinion as to
23 how much?

24 A No, sir.

25 Q None at all?

1 A I would have to assess that further before giving
2 such an answer.

3 Q Well, but you told the FCC under oath that you
4 thought the signal was too low.

5 A That is correct.

6 Q All right.

7 A But you're taking it out of context.

8 Q So, it is purely the adjacent channel interference
9 issue; is that correct?

10 A That is a very primary issue.

11 Q Okay. Now, let's talk about the interference.
12 Your finding was that at your receiver location, the signal
13 of Station WBAI was 38 dB greater than the Monticello
14 station.

15 A Yes, sir.

16 Q That is correct. That is the adjacent channel
17 signal that you said made it unusable?

18 A That is correct.

19 Q Okay. Now, did you mean that it was unusable in
20 the sense that with the equipment that you had, you could
21 not use the signal?

22 A No, I meant that in the context that after many
23 years of experience, I did not expect any solution to that
24 problem.

25 Q You did not think there could be any way to get

1 rid of 38 dB --

2 A Not reliably.

3 Q Hang on. Let me finish the question before you
4 give the answer. We will confuse the reporter.

5 You are telling me that there is no way, in your
6 knowledge, that you can get rid of 38 dB of interference.

7 A That is correct and not provide the quality of
8 service I heard over the translator.

9 Q Okay. Now, are you aware that Mr. Hidle has run a
10 test of the receiver, the same kind of receiver as was there
11 at the time of the Fort Lee translator, and found that it
12 has 33 dB of discrimination against the first adjacent
13 channel signal?

14 A I've read no such report, no.

15 Q You have not?

16 A No. You said Mr. Hidle?

17 Q Yes.

18 A I've read no reports from Mr. Hidle.

19 Q You have not read Turro Exhibit 7?

20 JUDGE STEINBERG: Why do we not put it in front of
21 him so that he can--

22 MR. A. NAFTALIN: Well, I just want to find out.

23 We --

24 JUDGE STEINBERG: No. I mean put it in front of
25 him so that he can look at it and determine whether he has

1 seen it before.

2 MR. A. NAFTALIN: Oh, okay.

3 JUDGE STEINBERG: He might have seen it, but does
4 not remember the name or remember it. That way we show
5 everybody.

6 Mr. LaFollette, why don't you skim through that?

7 THE WITNESS: Okay.

8 JUDGE STEINBERG: Basically, the question was have
9 you ever reviewed this before seeing it now?

10 BY MR. A. NAFTALIN:

11 Q Have you had enough time to tell whether you have
12 read this, Mr. LaFollette?

13 A No, I have not read this before.

14 Q You have not seen it before. Were you aware that
15 it was okay for the engineers to read each other's material?

16 A I assumed that to be the case. However, I have
17 not been provided this particular paper.

18 Q Then would you look at Page 7 of that statement,
19 the last page of the text?

20 A Okay.

21 Q Would you please read it to yourself? It is
22 rather short. The first paragraph. Tell me when you have
23 mastered it.

24 A All right. I've read it.

25 Q Now, do you have any reason to dispute the

1 statements in that paragraph?

2 A Not as far as the test went.

3 Q All right. Now, given that, are you still saying
4 that it would not have been possible to get rid of the 38 dB
5 worth of adjacent channel interference? You are starting
6 off with that any signal of 33 dB or less above the desired
7 signal at the receiver would not be noticed, correct? That
8 is what that says.

9 A You are talking -- you are referring to this
10 unmodulated signal here?

11 Q Does it say there that the signals were
12 unmodulated?

13 A It just says a signal.

14 Q Yes, well --

15 A There's no way to tell.

16 Q Well, okay. Make the assumption that they were
17 modulated. Keep going.

18 JUDGE STEINBERG: We are talking about Page 7 of
19 Turro 7?

20 MR. A. NAFTALIN: That is correct.

21 JUDGE STEINBERG: When Mr. Naftalin said this, he
22 meant Page 7.

23 MR. A. NAFTALIN: I meant Page 7. That is right.

24 BY MR. A. NAFTALIN:

25 Q I will throw in an assumption for you which I make

1 a representation that it is a valid assumption. We will
2 establish it at a later time. But there was a modulated
3 signal.

4 A Okay.

5 Q Now, starting from there and you have five more dB
6 and you have solved the problem, haven't you? If you get
7 five dB of filtering, you have solved the problem, correct?

8 A That would be correct if the test signal is the
9 same as WBAI.

10 Q I am not talking about the test signal. I am
11 talking about WBAI.

12 A I know, but here we're talking about a test
13 signal.

14 Q Well, what do you mean by the same as?

15 A Because the dynamic characteristics of the
16 modulated signal of WBAI certainly is not the same as a
17 static test signal injected into a receiver, with or without
18 modulation.

19 Q All right. Now, let's assume that these
20 measurements were made using modulated signals in accordance
21 with BIA standards. Are you telling me that there is
22 something peculiar about the WBAI signal that would have
23 meant there would be some other characteristic that would
24 prevent five dB of filtering from getting rid of that
25 signal?

1 A Well, I think the answer to that is shown in my
2 report on Figure 3.

3 Q All right. Why don't you find that? How does
4 this explain that?

5 A Well, you will note that observing Figure 3 that
6 WBAI, which is the first adjacent channel, has sideband
7 energy which actually intrudes well into the past band of
8 the bandwidth for WXTM. Any receiver tuned to the frequency
9 of WXTM is also going to receive those emissions. These are
10 -- this is sideband energy.

11 Q Were you aware when you took those measurements
12 that WJUX was transmitting monaurally?

13 A Yes.

14 Q You were, okay. You realized it was not a stereo
15 signal.

16 A I realized that, yes.

17 Q So, it did not use the sidebands.

18 A Well, every station uses the sidebands.

19 Q It did not have those --

20 A It didn't have the pilot carrier for 67 kilohertz.

21 Q Right, that is what I meant. Okay. So, you are
22 saying that there was some peculiarity in the WBAI signal at
23 that point that would have prevented this from being solved?

24 A Not a peculiarity but rather a characteristic that
25 you would expect from broadcast transmissions. That is, the

1 transmission of sidebands as well. As you can see from this
2 Figure 3, the sideband energy intrudes well into the past
3 band or the bandwidth for WXTM. This is not unusual. This
4 is why the protection ratios are what they are.

5 Q Now, suppose you are using this signal canceler
6 that we were talking about this morning.

7 A I heard you talking about it. I did not see the
8 document.

9 JUDGE STEINBERG: The co-channel eliminator?

10 MR. A. NAFTALIN: Channel eliminator.

11 BY MR. A. NAFTALIN:

12 Q Are you aware of that?

13 A I certainly overheard the discussions.

14 Q Are you familiar with that technology?

15 A As I said, I haven't read that particular
16 brochure.

17 Q I understand. Well, we can show it to you, but
18 are you familiar with the idea of it?

19 A I think the concept is well understood.

20 Q Okay. Now, if you used a device like that, would
21 it change your answer?

22 A Not necessarily, no.

23 Q Well, does that mean possibly?

24 A I think -- possibly?

25 Q Yes.

1 A I think it would take studies, direct studies, of
2 that device under the conditions to make such a
3 determination.

4 Q Okay. I accept that, but you are not now saying,
5 therefore, that it is impossible?

6 A Not impossible, just highly unlikely.

7 Q Unlikely because you do not know about it? Is
8 that right?

9 A No, because of the hostile environment under which
10 this signal is trying to be received. It's very hostile.

11 Q Because of the WBAI signal?

12 A That and also the long propagation path.

13 Q I understand.

14 JUDGE STEINBERG: That is the distance from Fort
15 Lee to Monticello?

16 THE WITNESS: Yes, sir, which is approximately 117
17 kilometers.

18 BY MR. A. NAFTALIN:

19 Q Now, you also measured the signals of Mr. Turro's
20 Pomona translator on that same roof in Fort Lee, correct?

21 A Yes.

22 Q Okay. Those signals were very strong, right?

23 A Stronger certainly than what we were discussing in
24 Figure 3.

25 Q Two hundred and twenty-four microvolts?

1 A Uh-huh.

2 Q That is pretty strong, isn't it?

3 A That's a fairly good signal, yes.

4 Q You said it was a noise free, high quality signal?

5 A Yes, sir.

6 Q Okay. It was not in the presence of adjacent
7 channel interference?

8 A Certainly not of this severity as in Figure 3.

9 Q Okay. Say that again.

10 A Not of the severity shown in Figure 3.

11 Q Well, and not of a nature to interfere with the
12 signal so that you could not hear it well?

13 A I would expect that to be the case, yes.

14 Q Okay. Now, you knew that the Pomona translator
15 was carrying the same programming as the Monticello station,
16 correct?

17 A Yes, sir.

18 Q Now, did you consider the possibility that Mr.
19 Turro's Fort Lee translator could be receiving the
20 Monticello signal by way of the Pomona translator?

21 A I certainly considered that might be a long term
22 usage, but I did not believe that to be the case at the
23 time.

24 Q What was the reason for that?

25 A The fact that a studio to transmitter link was in

1 operation from the Dumont studio of Turro to the Fort Lee
2 translator site and that monitoring observation showed that
3 it was carrying the programming of -- that was being also
4 carried by the Fort Lee translator.

5 Q Yes, you have said that. Let's assume for the
6 purposes of my question that there is an explanation for
7 that that does not include the fact that the programming was
8 actually being carried off the microwave at the Fort Lee
9 translator, just for the purposes of the next line of
10 questioning.

11 Now, one possibility was that you could have a
12 path from Monticello to Pomona and from Pomona to Fort Lee,
13 correct?

14 A That's my understanding, yes.

15 Q Okay. Now, do you have any reason to think that
16 that would not provide a perfectly good signal? Reliable
17 signal?

18 A No.

19 Q Actually, you think it probably would, don't you?

20 A I think it would, yes.

21 Q Okay. In fact, you considered making an
22 examination of that question, did you not?

23 A Yes, I did.

24 Q You actually recommended it?

25 A I recommended further investigation be done for

1 the Pomona site.

2 Q But that never happened, did it?

3 A No. I made no such investigation.

4 Q Okay. Now, how did it happen that your
5 recommendation was not accepted?

6 A I don't know.

7 Q Well, did --

8 A I don't know.

9 Q Well, did you have any conversations with anybody
10 on that subject?

11 A I had recommended it.

12 JUDGE STEINBERG: To whom?

13 THE WITNESS: To Howard Warshaw and, in fact, I
14 had suggested that if I did not, then somebody should do
15 further investigation.

16 BY MR. A. NAFTALIN:

17 Q What did he say?

18 A I never received authorization to do so.

19 Q You mean you wrote him a letter?

20 A No. This was verbal.

21 Q Okay. But you said something. Did he say
22 something after you said that? You said I recommend that
23 either we do it or somebody else make this investigation.

24 A I have no precise recollection other than I
25 thought somebody was actually going to investigate further.

1 Q Okay. Who do you think the somebody would have
2 been?

3 A I expected that maybe Mr. Terry Dalton.

4 Q Who?

5 A Terry Dalton.

6 Q Who is he?

7 A Terry Dalton is one of the individuals that
8 accompanied me on this particular investigation.

9 Q Right. He does not work for your firm?

10 A No, he does not.

11 Q Okay. Who is he?

12 A He is a technical advisor for WVNJ.

13 Q For Mr. Warshaw?

14 A That's my understanding.

15 Q So, you expect that he would make the
16 investigation instead of you?

17 A Well, I was hopeful that would be the case.

18 Q Why is that?

19 A Well, I felt it would be useful to gain additional
20 information in this regard.

21 Q Is he your consulting engineer?

22 A No, I do not believe so.

23 Q Okay. Now --

24 JUDGE STEINBERG: Was the recommendation made by
25 you about the same time as your written report was prepared,

1 or was it before or after?

2 THE WITNESS: On the day of the measurements, Your
3 Honor.

4 JUDGE STEINBERG: Oh, so that was February 2?

5 THE WITNESS: Yes.

6 JUDGE STEINBERG: Okay. You basically went out
7 and did the measurements. You reached certain conclusions.
8 You discussed them on that day with Mr. Warshaw?

9 THE WITNESS: That's right. I gave a verbal
10 report to Mr. Warshaw.

11 JUDGE STEINBERG: Okay. Then why did you
12 recommend that additional studies be done relating to the
13 Pomona translator?

14 THE WITNESS: Well, I felt it would be useful to
15 ascertain whether or not it appeared that the Pomona
16 translator was receiving its input signal from Fort Lee or
17 whether it was receiving it from another source, or directly
18 over the air.

19 BY MR. A. NAFTALIN:

20 Q But you never made that measurement, did you?

21 A No, I did not.

22 Q As far as you know, neither did anybody else?

23 A To my knowledge. I think maybe some -- I recall
24 that there may have been some preliminary investigation,
25 viewing the site and so forth, but that is all I recall.

1 Q Did you get any report about that?

2 A No written report, no, sir.

3 Q How about oral?

4 A Just off -- third-party.

5 Q Okay. Now, Mr. Guill is with your firm?

6 A Yes, he is.

7 Q Okay. He wrote a memorandum, do you remember
8 this, on February 6, 1995?

9 A I know, yes. We were both writing our views of
10 this.

11 Q It is addressed to the WVNU letter file?

12 A Uh-huh.

13 Q Is that a file that you have maintained?

14 A Quite a large file, yes.

15 Q Okay. There is a statement in there on February
16 6. I will read this to you. See if you remember it.

17 "However, at this time it has not been established
18 whether the W232AL Pomona, New York, translator is being fed
19 off the air or by another signal source. Plans are being
20 considered to ascertain the signal quality of WXTM-FM..."
21 that was then the call letters of JUX -- "...is providing to
22 this translator or whether the Pomona translator is also
23 being fed by some back-door method from the Jukebox studio
24 in Dumont."

25 Those plans never came to fruition? I s that

1 right?

2 A Not to my knowledge.

3 Q You made no investigation and made no
4 determination that there was anything back door about the
5 reception at Pomona?

6 A About the operation at Pomona, how it was being
7 received?

8 Q Yes.

9 A No, sir.

10 Q Okay. Now, you said in your statement to the
11 Commission starting at the bottom of Page 7 of your
12 statement, "The fine aural quality and absence of noise
13 observed may indicate that the Pomona W232AL translator is
14 not retransmitting the signal of WXTM-FM. Instead, it may
15 be retransmitting W276AQ or it may be receiving a direct
16 program to it." Remember that?

17 A Yes, sir.

18 Q Okay. Your sole evidence for that was that there
19 was an absence of noise and a high aural quality?

20 A Yes, sir.

21 Q Okay. You had considered the possibility, had
22 you, that that absence of noise and high aural quality could
23 occur because of a transmission to Pomona off the air from
24 Monticello and then from Pomona to Fort Lee? That that
25 might be the way it was done?

1 A There was that possibility, yes.

2 Q Okay. You recommended an investigation to look
3 into that question which never happened, correct?

4 A Yes, sir.

5 Q Okay. Is it still your view now that the reason
6 for the high aural quality or absence of noise was that the
7 Pomona translator was not retransmitting WXTM-FM?

8 A I'm not sure I quite follow.

9 Q Well, read that sentence. Did you find the
10 sentence?

11 A No, but I remember writing it.

12 Q Oh. Well, you might want to read it. Bottom of
13 Page 7.

14 A Okay.

15 Q It carries over to Page 8.

16 JUDGE STEINBERG: Just for the record, that is our
17 Pages 104 and 105.

18 BY MR. A. NAFTALIN:

19 Q Do you see that sentence?

20 A Yes, I do.

21 Q Okay. Is that still your opinion?

22 A It tends to be my opinion, yes.

23 Q What?

24 A Yes.

25 Q You still think that?

1 A I still think that, yes.

2 Q Although you know that it was entirely possible it
3 happened in an entirely different way?

4 A Yes, sir. That is correct.

5 Q Okay.

6 A That is my opinion.

7 Q You did not investigate to find out?

8 A No, I did not.

9 Q Whether the suggestion that you made to the
10 Commission of misconduct by Mr. Turro was true or not?

11 A Well, that's a broad statement.

12 Q Well, I understand. You answer it, though.

13 A I am not sure I can answer the question as you
14 asked it.

15 Q Well --

16 A There are several points that were raised in my
17 report.

18 Q I am only talking about this sentence.

19 A Well, certainly, I felt that to be the case or I
20 wouldn't have said it.

21 Q But you had it in your power to confirm the
22 accuracy of your suspicion or not, and you did not do that?

23 A No, I did not.

24 Q Okay. Do you think that is a responsible way to
25 deal with the FCC?

1 A I would have much preferred investigating that,
2 yes.

3 Q Okay. So, you really did not think it was very
4 responsible?

5 A I didn't say that. I said I would prefer
6 investigating this.

7 Q I got it. Now, please answer my question. Did
8 you think it was a responsible way to behave to the FCC?

9 A I felt that it was certainly not irresponsible.

10 Q All right, very good. Now, why did you not
11 investigate that situation?

12 MR. HELMICK: Asked and answered, Your Honor.

13 JUDGE STEINBERG: I think he answered the
14 question.

15 You were not retained to do that? Is that
16 correct?

17 THE WITNESS: I was not authorized to do any
18 further investigation.

19 JUDGE STEINBERG: All right.

20 MR. A. NAFTALIN: Very good. Thank you. That
21 completes my cross-examination.

22 JUDGE STEINBERG: Anything from you, Mr. Riley?

23 MR. RILEY: Yes.

24

25

CROSS-EXAMINATION

BY MR. RILEY:

Q Mr. LaFollette, I am James Riley. I represent Monticello Mountaintop Broadcasting, Inc., one of the parties in this proceeding.

The text of Bureau Exhibit 6 which you, I think, have in front of you -- this is your statement. It begins at what seems to be Page 93 by the stamp.

JUDGE STEINBERG: Okay. He does not have stamped copies, but he has in front of him what we all have. He has his report.

BY MR. RILEY:

Q Okay. Is the first page of what you have in front of you a declaration --

JUDGE STEINBERG: No. His first page is our Page 94. It says Engineering Report with the box on the front.

MR. RILEY: Okay.

BY MR. RILEY:

Q Is the last page, Mr. LaFollette, of what you have there something that is labeled at the top, Figure 5?

JUDGE STEINBERG: His material has a lot of program material.

MR. RILEY: Well, that is exactly what I have, Your Honor. That is where we are. I would like Mr. Aronowitz to give his witness a copy of his Exhibit 6.

1 I would like to take away from Mr. LaFollette the
2 document he is looking at, which is not an exhibit in this
3 record.

4 MR. ARONOWITZ: I just want to make sure that what
5 I have is complete.

6 MR. RILEY: Well, we will find out, Your Honor.

7 MR. ARONOWITZ: Calm down for a second, please.

8 JUDGE STEINBERG: It basically runs, Mr. Riley,
9 you are talking about our Pages 93 through 109?

10 MR. RILEY: That is what I have in front of me is
11 Pages 93 through 109 as Mr. LaFollette's Exhibit 6.

12 JUDGE STEINBERG: Okay. Let's put Pages 93
13 through 109 in front of Mr. LaFollette. Does anybody have a
14 clean copy of it?

15 MR. ARONOWITZ: I think I have an extra copy.

16 JUDGE STEINBERG: Mine is all marked up.

17 MR. RILEY: I have given Mr. LaFollette a copy of
18 Bureau Exhibit 6.

19 BY MR. RILEY:

20 Q Now, Mr. LaFollette, the first page of the
21 document now in front of you carries a stamp at the bottom
22 that is stamped Page No. 93. Do you see that?

23 A Yes, sir.

24 Q Would you look at Paragraph 3 of that page?

25 A Yes.

1 Q What you are affirming as continuing to be true
2 and correct upon your review is an engineering report
3 submitted as part of a complaint filed February 15. Is that
4 correct?

5 A That's what I understand.

6 Q An engineering report?

7 A Well, it's referred to as an engineering report,
8 Yes.

9 Q And you are a professional engineer?

10 A I am not a professional -- not registered, no.

11 Q But your occupation is that of an engineer?

12 A Yes, it is.

13 Q And you deem the report that is attached to Page
14 93, which begins at Page 94, to be an engineering report?
15 Is that correct?

16 A That's the nomenclature we use, yes.

17 Q Is it something other than an engineering report?

18 A Essentially we call just about all the work we do
19 an engineering report regardless of the subject.

20 Q Because you are an engineer?

21 A In practice, yes. Yes to your answer and
22 practice.

23 Q But your practice is as an engineer?

24 A In the firm. Well, the practice of the firm in
25 labeling this document.

1 Q I think I understand what you mean. What you mean
2 is that your firm is an engineering firm and not, for
3 example, a program consulting firm. Is that correct?

4 A That is correct, yes.

5 Q But does your statement of October 22, 1997,
6 affirming the truth of statements in a 1995 document that
7 you deem to be an engineering report undertake to affirm
8 that report as a unified document or to affirm engineering
9 statements?

10 A To affirm statements made in the document.

11 Q Of whatever nature?

12 A Of whatever nature.

13 Q How many days were you in New Jersey listening to
14 the signals of either the Fort Lee, New Jersey, translator
15 on Channel 276 or the Pomona translator on Channel 232 I
16 think it is or the signal of WXTM as it was at that time?
17 How many days were you there doing that?

18 A One day.

19 Q And when did you leave Washington?

20 A The previous day. The preceding day.

21 Q So you were in New Jersey the morning of
22 February 2?

23 A Near New Jersey. In Pennsylvania, actually. In
24 other words, we stopped in Pennsylvania overnight in close
25 proximity to New Jersey. It was an easy drive then on in.

1 Q Where did you stop, in Philadelphia?

2 A No. As I recall, it was Bethlehem. Perhaps
3 beyond Bethlehem, Pennsylvania. We didn't go through
4 Philadelphia.

5 Q That is fairly far north on an approach to Bergen
6 County, is it not?

7 A The route we took brought us out on the interstate
8 highway in close proximity where our destination was.

9 Q And your destination was what?

10 A Bergen County.

11 Q Let me avoid the geography of it. When did you
12 arrive in Bergen County?

13 A It would have been fairly early in the morning of
14 February 2. I don't have a specific time.

15 Q And when did you leave New Jersey?

16 A It was late in the evening.

17 Q Of the same day, February 2?

18 A Of the same day, yes.

19 Q And when did you report to Mr. Warshaw on your
20 findings?

21 A That same day. That evening.

22 Q At Mr. Warshaw's offices?

23 A Yes, sir.

24 Q So this was after you had completed listening to
25 the signals?

1 A That is correct. Yes.

2 Q So you listened to these signals one day in
3 February of 1995 for how many hours?

4 A Driving we were listening to the translator
5 station, and then actual observations on the roof I would
6 estimate at approximately three hours.

7 Q Altogether?

8 A Yes.

9 Q When you were testing for signal strength, and I
10 do not want to get into an engineering examination at all,
11 but the figures are attached to your exhibit, Figures 3 and
12 4 and maybe others, are documents indicating some testing
13 you were doing for signal strength. Is that right?

14 A That is correct.

15 Q When you were doing those tests, were you
16 listening to the program content on the channels you were
17 measuring?

18 A Yes.

19 Q You were?

20 A Yes.

21 Q So for this three hour period you were plugged
22 into the program?

23 A Yes. We had receiving equipment that let us
24 listen.

25 Q I understand you had the equipment that would let